IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 485 OF 2006

Agsons Real Estates Pvt.Ltd.,,
through its director -
Mr.Satishkumar S.Agarwal & Ors. .. Petitioners.

V/s.

1. Shri Anil Gulab Thakur & Ors. .. Respondents.

Mr. G.S.Godbole for the Petitioners.

Mr. S.V.Sadavarte for the Respondent Nos.1 and 2.

CORAM : R.M. SAVANT, J.

DATED : 04th JUNE, 2007.

P.C.:

. Rule. Rule, with the consent of the parties is made returnable forthwith and heard finally.

2. This petition filed under Article 227 of the Constitution of India, impugns the order dated 08.11.2005 passed by the Adhoc Addl. District Judge, Pune, by which order the petitioners' application for condonation of delay in filing the Civil Misc. Appeal against the judgment and decree dated 17.9.2003, came to be rejected. Such of the facts which are necessary to be cited are stated thus :

3. The petitioners herein are the original defendants in Special Civil Suit No. 463 of 1991 filed

by the Respondent Nos. 1 to 3 herein for declaration and partition in respect of the suit land and other properties. The plaintiffs in the said suit sought declaration in respect of the sale deed dated 1.3.1988 and 15.11.1991. The said suit was partly decreed by the judgment and order dated 29.02.1996 in respect of the some properties and the claim regarding the suit land Gat No. 1073 was dismissed. After the decision of the special civil suit No.463 of 1991, the respondents, amongst others proceedings, filed regular civil suit No. 47 of 2001. The said civil suit came to be decreed by the judgment and order dated 17th September, 2003. The petitioners herein applied for a certified copy of the said judgment on 10.10.2003 and the same was made available to the petitioner on 11.11.2003. The petitioners filed first civil appeal against the said decree. The said appeal was belated by 95 days. The petitioners, therefore, filed an application for condonation of delay. The said application was numbered as Misc. Application No. 202 of 2004. The case of the petitioners in the said application was that the person who was looking after the litigation had fallen ill and therefore, there was the said delay of 95 days in filing the first civil appeal.

4. In the said Misc. Application the petitioners

and the contesting respondents herein, have submitted that they did not desire to lead any evidence. The said application of the petitioners came to be rejected on the ground that the illness of the person concerned, one Satishkumar S. Agarwal, the Director of the petitioner No.1, was not substantiated.

5. I have heard the learned counsel for the petitioners and the learned counsel for the respondents. Shri Godbole, the learned counsel for the petitioners submits that the approach of the trial court in rejecting the application of the petitioners on the ground of delay is pedantic and technical. No party stands to gain by delay and unless there was a genuine reason, there was no occasion for the petitioners to file the said appeal belatedly. Shri Godbole, relied upon the judgment of the Apex Court in AIR 1987 S.C. pg 1353 between Collector, Land Acquisition, Anantnag and Anr. vs. Mst. Katiji and ors.. The said judgment interalia lays down the parameters for consideration of an application for condonation of delay; guiding principles have been culled out in the said judgment.

6. On the other hand, Shri Sadavarte, the learned counsel appearing for the contesting Respondents opposes the reliefs sought by the petitioners and contends that

no sufficient cause has been shown by the petitioners for condonation of the said delay of 95 days in filing the appeal. Shri Sadavarte further contends that the petitioners did not lead any evidence to substantiate the illness of a director concerned.

7. I have bestowed my anxious consideration to the rival contentions. In my view, the approach of the trial court is too technical. Shri Godbole rightly relied upon the judgment of the Apex Court, which in terms holds that while considering an application for condonation for delay, a highly technical approach should be eschewed and an approach which furthers the cause of justice should be adopted. In that view of the matter, the impugned order would have to be set aside.

8. Misc.application No. 202 of 2004 is therefore, consequentially allowed. The delay of 95 days in filing the Misc. Civil Appeal is condoned. However, the interest of justice would be subserved if costs of Rs. 3000/- are imposed on the petititioner. The said costs to be paid by the petitioner as a condition precedent; within four weeks from today. The Appeal to be numbered only after the petitioner produces evidence of having paid the said costs to the Respondents 1 and 2.

9. Rule is accordingly made absolute in the aforesaid terms.

(R.M.SAVANT,J.)